

LAND COURT

BRISBANE

25 JUNE 1996

**Re: Appeal against annual valuation
Valuation of Land Act 1944
Shire of Gatton (AV94-547)**

Warren M Fischer

v.

Chief Executive, Department of Lands

(Hearing at Gatton)

DECISION

Mr WM Fischer is the owner of land described as Lot 98 on Plan CA 311173, Parish of Murphy, containing an area of 64.88 ha. Under the provisions of the *Valuation of Land Act* 1944, as at 30 June 1993 the respondent determined the unimproved value of that land at \$44,000. Following an objection the unimproved value was reduced to \$43,000.

Mr Fischer appealed to the Land Court against the respondent's decision upon his objection advising that his estimate of the unimproved value is \$38,000. His grounds of appeal are as follows:

.the valuation is unreasonable and excessive in view of the purchase price of the land at the contract sale date (1 January 1993);

.sufficient account has not been taken of the improvements on the land in arriving at the valuation - improvements include:-

dam, roads (surface formation), clearing, building site preparation, fencing, standing timber and flora;

.sufficient weight has not been given to the constraints - statutory and natural - on practical use of the land in arriving at the valuation; and

.sufficient weight has not been given to the effects of factors external to the land in arriving at the valuation.

At the hearing Mr Fischer appeared and gave evidence, while valuation evidence was given for the respondent by Mr DJ O'Connor, a registered valuer employed by the Department of Lands.

The subject land is located at White Mountain, approximately 6 km north of Murphys Creek township, which is about 20 km north-east of Toowoomba. Access to the property is by means of the formed earth and gravel White Mountain Road, then by means of an earth track

extending along the road reserve on the eastern side of the subject land, entering the property about halfway down the eastern boundary. Access to the property is described as fair.

Few services are available to the property; a telephone service passes the boundary, while mail delivery is available at the intersection of White Mountain and Fifteen Mile Roads.

There is little disagreement between the parties as to the description of the property. Mr O'Connor described the property as follows:

"The property comprises lower timbered sandstone forest slopes with steep gullies in the southern areas while the higher slopes of White Mountain are of basaltic origin with heavier soils and sweeter associated grasses. Timbers vary from spotted gum and ironbark to bloodwood and mountain box with varying degrees of wattle infestation on the lower slopes.

Panoramic vista like rural views to the south are available from various points on the property."

The land is zoned "Rural Conservation" under the Town Planning Scheme for the Shire of Gatton, and at the date of hearing was not being used.

Mr Fischer explained that he purchased the subject land on 1 January 1993 for \$45,000, principally because of its isolation. He was attracted to the area by an advertisement for a nearby property and became aware that the subject land was for sale for \$55,000. He inspected the land, climbed to the top of the mountain with some difficulty and, as he put it, he was taken by the view. Although he felt that it was a very powerful place, he was not prepared to pay the price. After further negotiation with the owner, they settled on the price of \$45,000.

Mr Fischer did not purchase the land with any particular use in mind. He said: "... there's something more important than the view at the mountain, what's important to me is the mountain itself and what it represents."

Later he said:

"I don't know what moved me, but it just had a call."

That call was so strong that on 28 February 1995 Mr Fischer purchased the adjoining Lot 12, containing an area of 31.43 ha, for \$25,000. His sole purpose for purchasing that land was to make the mountain complete.

Mr Fischer had not decided to what use he could put the subject land. While he agreed that it could be used as a rural residential retreat, he had investigated alternative uses for the land. With this in mind, he had received a report from a Mr W. Steentsma of the Land Use Management Unit of the Department of Primary Industries. Although Mr Steentsma had not inspected the land, he had prepared a report based on the material available to him on the characteristics of the land and its limitations.

Mr Steentsma's report emphasises the steep and mountainous nature of the land and its shallow stony soils which are subject to erosion, preventing most types of agricultural use. Mr Fischer thought the land could be used for limited horticultural purposes or for bee-keeping.

Mr Fischer also tendered a publication by a Mr B Powell, of the Land Resources Branch of the Department of Primary Industries, for the purpose of demonstrating that the type of country found on the subject land was not suitable for agriculture because of the steepness of the slopes, the potential for erosion and landslip and its general stoniness and rockiness. Mr Powell's report indicates that erosion is a widespread problem in that type of country, particularly on the steeper slopes.

However, the potential use of the land was not in dispute as the respondent had valued it as a rural retreat and had not had regard to its potential for any agricultural or horticultural use.

Mr Fischer referred to the differences between the uses that can be made of land zoned "Rural Conservation" and that zoned "Rural General Farming". However, as the respondent had not taken account of any potential other than as a rural retreat, the "Rural Conservation" zoning does not have any effect upon the unimproved value of the land in this case. Mr Fischer explained how he had arrived at his opinion of the unimproved value of the subject land. He had taken the purchase price as at 1 January 1993 of \$45,000 and from that had deducted the value of improvements on the land at that time. He attributed a value to the improvements of \$15,000, being dam \$7,500, house site \$5,000 and roads \$2,500. This gave him an unimproved value of \$30,000.

At that time the respondent's unimproved value of the subject land (made as at 31 March 1992) was \$26,500. From the increases in the valuations of the properties in the area, he ascertained that the average increase was an index of 11944, however, his analysed figure of \$30,000 represented a relative index of only 11177 from the previous valuation. Mr Fischer calculated that the increase should have been \$30,000 multiplied by 11944 divided by 11177 to give an unimproved value of \$32,060. This, however, was a base calculation and, appreciating that valuation is not a precise science, Mr Fischer said he conceded that \$38,000 would have been a reasonable increase in the unimproved value as at 30 June 1993. However, Mr Fischer readily conceded that his calculations depended entirely upon the accuracy of his analysis of the sale which, in turn, depended on the added value attributed to the improvements in his analysis of the sale.

Mr Fischer referred to a number of sales in the immediate area and gave details of their sale prices and, as best he could, comparisons of the type of country. While he had detailed knowledge of some of the sales, he conceded that he had not fully inspected others. He did not attempt analyses of any of the sales and did not know exactly what improvements were on them at the time of sale.

Giving evidence for the respondent, Mr O'Connor explained that he saw the ruggedness of the block as being its attraction. He considered its highest and best use would be as a rural retreat. Therefore, he considered that the zoning of "Rural Conservation", which allowed such activity, did not adversely affect the unimproved value of the land. In support of his valuation, O'Connor relied upon four sales of properties in the area. These properties varied in size from 64.88 ha to 78.26 ha, variously zoned "Rural Conservation" and "Rural General Farming",

which sold between 1 January 1993 and 23 March 1993 for sale prices ranging from \$45,000 to \$60,000. The sales were virtually vacant or lightly improved and analysed to show unimproved values ranging between \$43,000 and \$55,000, to which the respondent had applied unimproved values as at the relevant date of \$43,000, \$43,000, \$49,000 and \$48,000.

As was to be expected, Mr O'Connor relied principally on the sale of the subject land as his basis for the valuation. He considered that this sale was supported by the other three sales.

In his analysis of the sale of the subject land, Mr O'Connor had arrived at an added value of improvements of \$2,000. The improvements consisted principally of earthworks being the dam, the pad for a house, roads and tracks, all of which Mr O'Connor considered could have been constructed by a D5 or D6 bulldozer in about 20 hours. If they were constructed by a larger D9 bulldozer the cost would be somewhat greater. Mr O'Connor gave details of how he arrived at the individual values of each of the items in the analysis and why he attributed an added value of \$2,000, as distinct from the analysis of the same sale made by Mr Fischer.

Mr O'Connor went on to say that he considered that the existing house site does not take full advantage of the views which are available from higher up the mountain. However, he conceded that access to such sites would be at substantial extra cost. He said that if a purchaser wanted to take advantage of the views and build a house, he would have to expend a considerable amount of money to get a trafficable access.

Mr Fischer challenged the values attributed to the improvements on the sales applied by Mr O'Connor. In particular, he contested the cost of constructing roads. While Mr Fischer had a good general knowledge of the properties in the area, it seemed to me that Mr O'Connor had a more detailed knowledge, extending back over many years and was able to give first-hand evidence of the details of the properties as well as the improvements on them. However, it was clear that the greatest issue between the parties was in relation to the value of improvements which were on the subject land at the time of sale.

I do not propose to set out in detail the arguments in respect of the value of improvements. Section 5(1) of the *Valuation of Land Act* 1944 defines "the value of improvements" as "... the added value which the improvements give to the land at the time as at which the value is required to be ascertained for the purposes of this Act, irrespective of the cost of the improvements ...".

The definition goes on to add that "However, the added value shall in no case exceed the amount that should reasonably be involved in effecting, at the time as at which the value is required to be ascertained for the purposes of this Act, improvements of a nature and efficiency equivalent to the existing improvements".

Mr Fischer has endeavoured to cost each of the improvements which were on the subject land at the time he purchased it. However, Mr O'Connor has adopted an approach which I consider to be more in keeping with the spirit of the definition in considering just what value the

improvements add to the land. He has looked at their added value rather than the cost of carrying out each of those improvements.

Mr O'Connor's approach is exemplified in his answer to a question as to whether he felt that he had allowed sufficient for the improvements on the subject land:

"... the dam, it doesn't add significant value to the land, the main track to the pad where Mr Fischer's shed is held, is where the value lies, the track and the pad, the other tracks are incidental and their added value is limited."

Indeed, having regard to the reason for Mr Fischer's purchase of the subject land, one could question just what added value he attributed to the improvements. It was the mountain that he wished to purchase.

After carefully considering the whole of the evidence, I have come to the conclusion that there is little wrong with Mr O'Connor's valuation. It is clear that he relied upon the sale of the subject land as his principal basis of valuation. He analysed the sale to show an unimproved value of \$43,000. However, he explained that he had increased the value of the area by 20%, which resulted in an unimproved value of \$44,000 on the subject land. Following an objection by Mr Fischer, Mr O'Connor had reviewed the valuation and considered that it should be reduced to the extent of the analysis of the sale. He had acted accordingly.

Mr Fischer has raised concerns about the analysis of the sale of the subject land. However, for reasons which I have set out above, I prefer the analysis made by Mr O'Connor. Mr Fischer has referred to a number of sales in the area, some of which were for prices less than the applied unimproved values by the respondent. Mr O'Connor has explained these apparent anomalies by saying that he considered that such sales were fortuitous and had not been exposed to the open market.

From the evidence presented in this case, it is clear that the properties in this area are difficult to value. They would not appeal to every purchaser as they are rugged and mostly isolated. Indeed, Mr Fischer said that that was what appealed to him and, in particular, the fact that White Mountain was largely situated on the subject land. It so affected him that he bought the adjoining property to, as he put it, complete the mountain. It would seem to me that the market for such properties is a special and limited one. Different attributes appeal to different people and in such circumstances, it is not surprising that there would be differences in sale prices. This makes it very difficult for a valuer to maintain proper relativity in such an area. However, those other properties are not before me for determination and it is the valuation of the subject land that I must consider.

Having regard to the whole of the evidence, I consider that Mr O'Connor's valuation is well supported and therefore the appeal must be dismissed.

Accordingly, the appeal is dismissed and the unimproved value of the subject land determined by the respondent is affirmed at Forty-three Thousand Dollars (\$43,000).

JJ TRICKETT
PRESIDENT OF THE LAND COURT